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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/642,227	08/21/2000	Yuji Shimizu	028567/0103	7672
22428	7590	01/21/2004	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			PORTER, RACHEL L	
			ART UNIT	PAPER NUMBER
			3626	

DATE MAILED: 01/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/642,227	SHIMIZU, YUJI	
	Examiner Rachel L. Porter	Art Unit 3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 21 August 2000.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-111 is/are pending in the application.
- 4a) Of the above claim(s) 58-111 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-57 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>3</u> | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Notice to Applicants***

1. This communication is in response to the application filed 8/31/00 and the election filed 8/31/00. Claims 1-111 are pending. Claims 58-11 have been withdrawn from consideration as being drawn to non-elected invention. The IDS file 11/20/2000 has been entered and considered.

***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3,10,12,14,21-24,32,36,38, 40, and 47-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 3, it is unclear how the phrase, "in the event of presence of a plurality of the trial product information," further limits the claim.

Claim 10 recites the limitation "the discount rate" in lines 7 and 10. The claim also recites the limitation "the fixed price" in line 9. There is insufficient antecedent basis

for these limitations in the claim. It is also unclear whether the “selling price determining unit” is determining a discount rate, a fixed rate, or both.

A similar analysis may be applied to claims 12,14,32,36,38, and 40, since each recites “the discount rate” or “the discount rate” and “the fixed rate.”

Claim 21 recites the limitation "the plurality of types of customized components" in lines 7-8 and lines 12-13. There is insufficient antecedent basis for this limitation in the claim, because none of the previous claims recite customized components. Moreover, it is unclear which functions the customized display unit performs, other than displaying a plurality of customized components. In other words, the phrase, “different in design about the components for composing the new merchandise to said ...customers,” does not appear to further limit or explain which functions are performed by the customized component display.

A similar analysis may be applied to claims 22-24, and 47-50.

### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-7,29-33 and 55-57 are rejected under 35 U.S.C. 102(e) as being anticipated by Abelow (USPN 5,999,908).

[claim 1] Abelow teaches a merchandise planning and development system comprising:

a merchandise planning information notice unit for informing many and unspecified customers of merchandise planning and development information relating to planning and/or development of new merchandise through a network; (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

an opinion information collecting unit for collecting the opinion information from the customers looking up the merchandise planning information through said network; and (col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

merchandise information notice unit for informing said many and unspecified customers of the merchandise information suited to the needs of the customers according to the opinion information through said network. (col. 16, lines 4-60; col. 18, lines 63-col. 19, lines 49)

[claims 2-4] Abelow teaches a method of surveying the popularity of various products at various stages of the product life cycle, including product launch (i.e. trial product) (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34; col. 18, lines 63-col. 19, lines 49, Figures 16, 22-24)

[claims 5-6] see Abelow: col. 10, lines 3-14; col. 75, lines 41-61.

[claim 7] Abelow teaches the merchandise planning and development system according to claim 1, wherein said opinion information collecting unit collects the

opinion information from said many and unspecified customers, on the basis of the results of electronic inquiry in order to analyze the needs. (col. 27, line 65-col. 28, line 67; col. 35, line 64-col. 37, line 19)

[claims 29-30] Claims 29 and 30 are addressed by the rejection of claim 1.

[claims 31-33] Abelow teaches a method of surveying the popularity of various products at various stages of the product life cycle, including product launch (i.e. trial product) (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34; col. 18, lines 63-col. 19, lines 49, Figures 16, 22-24)

[claim 55] Abelow teaches merchandise planning and development method comprising:

a merchandise planning information notice step of informing many and unspecified customers of merchandise planning and development information relating to planning and/or development of a plurality of new merchandise on the basis of one concept through a network; (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

an opinion information collecting step of collecting the opinion information from the customers looking up the merchandise planning information through said network; and (col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a merchandise information notice step of informing said many and unspecified customers of the merchandise information relating to said plurality of new merchandise suited to the needs of the customers according to the opinion information through said network. (col. 16, lines 4-60; col. 18, lines 63-col. 19, lines 49)

[claims 56] Abelow teaches a computer readable medium for storing instructions, which when executed by a computer, causes the computer to perform:

a merchandise planning information notice step of informing many and unspecified customers of merchandise planning and development information relating to planning and/or development of new merchandise through a network; (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

an opinion information collecting step of collecting the opinion information from the customers looking up the merchandise planning information through said network; and (col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a merchandise information notice step of informing said many and unspecified customers of the merchandise information suited to the needs of the customers according to the opinion information through said network. (col. 16, lines 4-60; col. 18, lines 63-col. 19, lines 49)

[claim 57] Abelow teaches a computer readable medium for storing instructions, which when executed by a computer, causes the computer to perform:

a merchandise planning information notice step of informing many and unspecified customers of merchandise planning and development information relating to planning and/or development of a plurality of new merchandise on the basis of one concept through a network; (col. 9, lines 19-60; col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

an opinion information collecting step of collecting the opinion information from the customers looking up the merchandise planning information through said network; and (col. 16, lines 4-60; col. 17, line 33-col. 18, line 34)

a merchandise information notice step of informing said many and unspecified customers of the merchandise information relating to said plurality of new merchandise suited to the needs of the customers according to the opinion information through said network. (col. 16, lines 4-60; col. 18, lines 63-col. 19, lines 49)

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 8-28 and 34-54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abelow (USPN 5,999,908) in view of Murcko, Jr. (USPN 6,578,014) [claims 8-20] Abelow teaches the merchandise planning and development system according to claim 1, but does not expressly disclose that the system includes a sales booking unit and a price determining unit. However, Abelow does consider pricing information in determining which factors will improve product sales.(col. 87, lines 55-56). Murcko teaches a system further comprising: ,

a sales booking unit for accepting sales reservation of new merchandise to be released corresponding to the merchandise information from said many and unspecified customers through said network; and (Figure 17)

a selling price determining unit for determining the selling price of the new merchandise based on various market factors, including bidding and auction results (col. 28, lines 1-30)

At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the system of Abelow with the teaching of Murcko to accept sales reservations and to allow for fluctuations in pricing depending upon various market conditions. One would have been motivated to include these features to ensure that the manufacturer of a particular product outperforms competitors. (Abelow: Figure 16)

[claims 21-24] Abelow teaches a system that allows the users to customize various product components. (col. 27, line 65-col. 28, line 67; col. 35, line 64-col. 37, line 19)

[claims 25-28] see Abelow: col. 55, line 58-col. 58, line 9.

[claims 34-46] Abelow teaches the merchandise planning and development method, but does not expressly disclose that the method includes a sales booking unit and a price determining unit. However, Abelow does consider pricing information in determining which factors will improve product sales.(col. 87, lines 55-56). Murcko teaches a merchandise planning and development method further comprising,

a sales booking step of accepting sales reservation of new merchandise to be released corresponding to the merchandise information from said many and unspecified customers through said network; and (Figure 17)

a selling price determining step of determining the selling price of the new merchandise based on various market factors, including bidding and auction results (col. 28, lines 1-30)

At the time of the Applicant's invention, it would have been obvious to one of ordinary skill in the art to modify the method of Abelow with the teaching of Murcko to accept sales reservations and to allow for fluctuations in pricing depending upon various market conditions. One would have been motivated to include these features to ensure that the manufacturer of a particular product outperforms competitors. (Abelow: Figure 16)

[claims 47-50] Abelow teaches a system that allows the users to customize various product components. (col. 27, line 65-col. 28, line 67; col. 35, line 64-col. 37, line 19)

[claims 51-54] see Abelow: col. 55, line 58-col. 58, line 9.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Maxwell (USPN 6,195,643) teaches a method for evaluating products based upon survey responses and ranked user requirements.

- Dong et al (USPN 6,526,526) teaches a system and method for beta testing of computer software and adapting the product to meet end-user requirements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel L. Porter whose telephone number is 703-305-0108. The examiner can normally be reached on M-F, 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached on (703)305-9588. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

RP  
RP

Alexander K. Korsak  
Alexander K. Korsak  
Primary Examiner  
Art Unit